

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
WorldCom, Inc. Petition for Waiver of the)	DA 00-2131
Supplemental Order Clarification)	
Regarding UNE Combinations)	

COMMENTS

In its November 24, 1999 *Supplemental Order* in CC Docket No. 96-98, the Commission determined that interexchange carriers (IXCs) may not convert special access services to combinations of unbundled loop and transport network elements.¹ In that order, the Commission explained that this constraint does not apply where a carrier uses the UNE/transport combination to provide a “significant amount of local exchange service” to a customer.

The Commission’s June 2, 2000 *Supplemental Order Clarification* later specified three “safe harbors” for determining when a carrier handles a “significant” amount of local exchange service.² These provisions require, in part, that (1) the requesting carrier certifies it is the exclusive provider of an end user’s local exchange service. Loop-transport combinations must terminate at the requesting carrier’s collocation arrangement in at least one incumbent local

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Supplemental Order*, 15 FCC Rcd 1761 (1999) at ¶ 4.

² Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587 (2000) (“Clarification Order”) at ¶ 22.

exchange carrier (ILEC) central office; or, (2) the requesting carrier certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user dialtone lines. For DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually; or, (3) the requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least 50 percent of the traffic on each of these channels is local voice traffic, and the entire loop facility has at least 33 percent local voice traffic.³

In its September 12, 2000 Petition for Waiver in the above-captioned matter, WorldCom, Inc. (WorldCom) asks the Commission to waive the "safe harbor" definitions for circuits that it asserts carry "exclusively local" traffic. According to WorldCom, waiver is necessary because of the "unique" nature of its network, which WorldCom states includes approximately 20,000 DS-1 circuits leased from ILEC access tariffs used to provide "exclusively local circuits" that do not qualify under any of the three conditions specified in the *Supplemental Order Clarification*. Additionally, WorldCom seeks a "rebuttable presumption" that any circuit that terminates at one of its Class 5 local switches is a local circuit subject to the terms of the waiver.⁴

As this Commission has consistently recognized, parties seeking waiver of the Commission's rules face a "high hurdle even at the starting gate."⁵ Under the relevant case law, an agency must adhere strictly to its rules unless a party can show "reasons why in the public

³ *Id.*

⁴ WorldCom Petition at 1-2.

⁵ See, e.g., Part 68 Waiver Requests of Cisco Systems, et al., *Order*, DA 00-1965 (rel. Aug. 28, 2000), citing *WALT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

interest the rule should be waived." ⁶ The *Supplemental Order Clarification* itself makes clear that waiver of the "safe harbor" provisions can only be granted where "extraordinary circumstances" are shown.⁷ Otherwise, exchange carriers would see wholesale substitutions of UNEs for existing access services, which in turn cause catastrophic revenue losses for exchange carriers and pose a severe threat to universal service.⁸

Obviously, therefore, the Commission should approach WorldCom's petition with great caution. It is not at all clear, for example, what "extraordinary circumstances" distinguish WorldCom's network from that of any other large IXC's. Moreover, WorldCom's petition does not even demonstrate that the circuits at issue carry a "significant" amount of local exchange service." This is because WorldCom requests the ability to convert to substitute UNEs for special access circuits when those circuits are used to provide any "local" service, *including switched access services*.⁹ Thus, there is no way to determine whether the circuits at issue carry a significant amount of local "dialtone" traffic, the relevant type for purposes of the *Supplemental Order Clarification*.

In fact, it would appear that the requested waiver would permit WorldCom to substitute UNEs for access services even where no local exchange "dialtone" service is provided at all. This would obviously fly in the face of the Commission's intent in establishing a temporary prohibition on the substitution of UNEs for access services.

⁶ *Id.*, citing *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

⁷ *Supplemental Order Clarification* at ¶ 23.

⁸ *See id.* at ¶ 7.

⁹ *See* WorldCom Petition at 2 ("100 percent of the activated channels carry exclusively local (*including switched access*) traffic"), and at 8 ("[a]pproximately 20,000 of the leased DS-1s carry exclusively local switched (local exchange and *switched access*) traffic") (emphasis added).

Further, it appears that the Commission has already considered – and rejected – many of WorldCom’s proposals in proceedings leading up to the *Supplemental Order Clarification*. For example, in considering various alternatives to the three “safe harbor” criteria, the Commission specifically rejected Worldcom’s proposal to establish a presumption that circuits connected to a port on a “Class 5” switch or its equivalent is used exclusively to provide local exchange (dialtone) service. In fact, the Commission already recognized that IXC connections to a “Class 5” switch in many instances involve circuits that are multiplexed down from larger capacity facilities to provide exchange access service. WorldCom presents no showing as to why the Commission should treat such configurations differently now, in the context of a waiver request, than it did in the proceeding establishing the underlying rule.

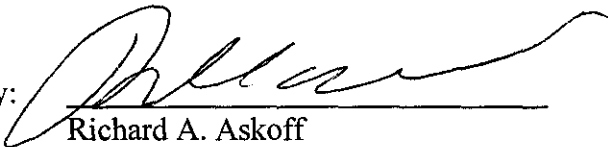
For the foregoing reasons, NECA believes that the record does not support grant of WorldCom’s petition for waiver. Rather than risk substantial harm to exchange carriers and the Commission’s universal service goals in the context of a waiver proceeding, the Commission

should move forward with consideration of the fundamental access reform and interconnection issues in the context of CC Docket 96-98.¹⁰

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¹⁰ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 (1999).

CERTIFICATE OF SERVICE

I hereby certify that copy of the Comments was served this 2nd day of October 2000, by electronic delivery or first class mail, to the persons listed below.

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